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In re Application of MULTHOFF :
U.S. Application No.: 10/581,918 :
PCT Application No.: PCT/EP2004/013858 :
Int. Filing Date: 06 December 2004 :
Priority Date Claimed: 05 December 2003 : DECISION
Attorney Docket No.: KNAUTHE-12014 :
For: COMPOSITIONS AND METHODS FOR :
THE TREATMENT AND DIAGNOSIS OF :
NEOPLASTIC AND INFECTIOUS DISEASES :

This is in response to applicant's petition under 37 CFR 1.10(c) filed 24 June 2009.

BACKGROUND

On 06 December 2004, applicant filed international application PCT/EP2004/013858, which claimed priority of an earlier European Patent Office application filed 05 December 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 16 June 2005. The thirty-month period for paying the basic national fee in the United States expired on 05 June 2006.

On 05 June 2006, applicant purportedly filed national stage papers in the United States Designated/Elected Office (DO/EO/US) via the Express Mail Post Office to Addressee service of the USPS ("Express Mail").

On 24 June 2009, applicant filed the present petition under 37 CFR 1.10(c)

DISCUSSION

37 CFR 1.10(c) states,

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee"

service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

With regard to item (1) above, it would not be reasonable to conclude at the present time that the petition was promptly filed. In particular, more than three years have passed since applicant presumably received notification of the accorded filing date as shown on the return postcard receipt, a copy of which was included with the petition. However, the petition does not provide a sufficient explanation regarding the delay.

With regard to item (2) above, a review of the transmittal letter (Form PTO-1390) reveals that the Express Mail mailing label number was placed on the correspondence in question prior to the original mailing by Express Mail.

With regard to item (3) above, the Express Mail mailing label shows a "date-in" of 05 June 2006.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.10(c) is DISMISSED without prejudice.

Until a grantable petition under 37 CFR 1.10(c) is filed, the present application is held abandoned for failure to timely pay the basic national fee.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(c)".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria,

Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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